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SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
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AFFINITY ENGINES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

AFFINITY ENGINES, INC., a Delaware corporation,

Plaintiff,

v.

GOOGLE, INC., a Delaware corporation, ORKUT.COM, LLC, a Delaware limited liability company, ORKUT BUYUKKOKTEN, individually, and DOES 1-20, inclusive,

Defendants.

CASE NO. 1 04 CV 020368

COMPLAINT FOR:

1. **MISAPPROPRIATION OF TRADE SECRETS**
2. **COMMON LAW MISAPPROPRIATION**
3. **BREACH OF FIDUCIARY DUTY**
4. **BREACH OF WRITTEN CONTRACT**
5. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
6. **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**
7. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
8. **CONVERSION**
9. **FRAUD AND DECEIT**
10. **CONSTRUCTIVE FRAUD**
11. **COMMON LAW UNFAIR COMPETITION**
12. **UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200, et seq.**

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Plaintiff Affinity Engines, Inc. ("AEI") hereby complains and alleges against defendants Google, Inc., Orkut.com, LLC, Orkut Buyukkokten, and the above listed Doe Defendants (collectively, the "defendants") as follows:

NATURE OF ACTION

1. This is an action for injunctive relief and monetary damages based on the defendants' misappropriation of AEI's trade secrets and confidential information, common law misappropriation, breach of fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing, intentional interference with contractual and prospective economic relations, conversion, fraud and deceit, constructive fraud, and unfair competition under California common law and Cal. Bus. & Prof. Code §§ 17200 et seq.

SUBJECT MATTER JURISDICTION AND VENUE

2. This Court has jurisdiction over this entire action by virtue of the fact that this is a civil action wherein the matter in controversy, exclusive of interest, exceeds $25,000.

3. Venue is proper in this Court for defendants pursuant to California Code of Civil Procedure §§ 395 and 395.5 because certain defendants reside and/or have a principal place of business in Santa Clara County. In addition, a substantial part of the events or omissions giving rise to the claims alleged herein occurred within the State of California and specifically, within Santa Clara County. Finally, all parties to this action entered into a written tolling agreement providing that Santa Clara County shall be "the sole and exclusive venue and jurisdiction" for this action.

THE PARTIES AND PERSONAL JURISDICTION

4. Plaintiff Affinity Engines, Inc. ("AEI") is a Delaware corporation with its headquarters at 165 University Avenue, Palo Alto, California 94301. AEI is in the business of providing social networking services to individuals using network relationship software and management products delivered through the Internet. AEI's present social networking product is called "inCircle." inCircle was developed by AEI and is currently being offered to graduates of major universities through their alumni associations. AEI has signed up the alumni associations of Stanford University, the University of Southern California, the University of Michigan, the

University of Texas, the University of South Florida and the Stanford Graduate School of Business as its initial customers, and is in the business of selling, licensing and promoting the inCircle software to universities to provide social networking software to their alumni.

5. Defendant Google, Inc. ("Google") is a Delaware corporation with its principal place of business at 2400 Bayshore Parkway, Mountain View, California 94043. Google was founded by Larry Page and Sergey Brin, two former Computer Science students at Stanford University ("Stanford"). Google is in the business of providing Internet-based search engine functions to the general public through its website, Google.com, and related websites.

6. On information and belief, defendant Orkut.com LLC is a Delaware limited liability company that resides in Santa Clara County, California. Orkut.com LLC was formed on January 12, 2004 and, on information and belief, is a wholly owned subsidiary of Google. Orkut.com is in the business of providing social networking services in the form of a website that connects people through a network of trusted friends. The Orkut.com website ("Orkut.com") was launched on January 22, 2004 and is operated in affiliation with Google. Prior to the launch of Orkut.com, Google had no social networking website, nor any product offering in the area of social networking software.

7. Defendant Orkut Buyukkokten ("Buyukkokten") is currently employed as a software engineer by Google and resides in Mountain View, California.

8. AEI is ignorant of the true names and capacities of the defendants sued herein as Does 1 through 20, and for that reason has sued them by their fictitious names. On information and belief, AEI alleges that each of these fictitiously named defendants is responsible in some manner for some or all of the acts alleged herein, and that AEI's damages as herein alleged were proximately caused by such defendants. AEI will amend this Complaint to set forth the true names and capacities of the fictitiously-named defendants once AEI has ascertained that information.

9. AEI is informed and believes and on that basis alleges that, at all relevant times, each of the defendants was an employee, agent, representative, partner and/or co-conspirator of each of the remaining defendants and was, with respect to all matters referred to

herein, acting within the purpose and scope of such employment, agency, representation, partnership and/or conspiracy. AEI is further informed and believes and on that basis alleges that each of the defendants has ratified, authorized and/or approved the acts alleged herein of its respective employees, agents, representatives, partners and/or co-conspirators. AEI is further informed and believes and on that basis alleges that each of the defendants, in conspiring and/or acting in concert with one another in committing the wrongful acts and violations of law complained of herein, is jointly and severally liable with one another to plaintiff.

FACTUAL ALLEGATIONS

10. In 2001, Tyler Ziemann, a Stanford senior, and defendant Buyukkokten, a Stanford Computer Science Ph.D student in his final year of studies, began to work on designing and implementing software for a new form of social or relationship networking website. "Social networking" or "network relationship" software allows people to communicate within a defined community comprised of a "circle of friends" that are identified on the website, and also to communicate with an expanding community comprised of "friends of friends" and "friends of friends of friends." A social networking website allows its users to search for information within a community of users who are related by a specified criteria to the user conducting the search inquiry, and allows the user to modify search results based upon other searches conducted by their peers in the network. Social networking can also be used to identify common interests or characteristics for a variety of purposes, including socializing, establishing business contacts or dating, among others.

11. During the summer and fall of 2001, Ziemann and defendant Buyukkokten spent a significant amount of their free time conceptualizing and developing their social networking website. Ziemann was not a programmer, so Buyukkokten did the programming for the website. Called "Club Nexus," their social networking website was launched in November 2001. The Club Nexus website was not open to the general public and was offered only to Stanford undergraduate students. Club Nexus was an immediate success after its launch in November 2001, with more than 30% of the Stanford undergraduate population signing up as members within the first six months. In accordance with Stanford invention assignment policies,

Ziemann and Buyukkokten were the sole owners of Club Nexus and all related intellectual property rights, because the website was developed in their spare time with no more than incidental use of Stanford resources.

12. In December 2001, Concept2Company, Inc. ("C2C"), a venture development company based in Palo Alto, California, became aware of Club Nexus and approached Ziemann and defendant Buyukkokten to see if they would like help in starting a new company to commercialize their concepts, ideas and inventions. Thereafter, on April 30, 2002, the parties entered into a written retention agreement ("Retention Agreement"). As part of the Retention Agreement with C2C, Ziemann and Buyukkokten agreed to assign to the new company all inventions and all improvements to inventions relating to the Club Nexus technology.

13. During the summer of 2002, Ziemann and defendant Buyukkokten graduated from Stanford. During the same time period, C2C, Ziemann and defendant Buyukkokten met frequently to discuss the business strategy of the new company. They decided to pursue the development of social networking software initially for university alumni, and approached the Stanford Alumni Association to see if the Association would be interested in launching a social networking website for Stanford alumni.

14. On August 5, 2002, Ziemann and Buyukkokten incorporated the new company, "Affinity Engines, Inc.," the Plaintiff in this case. Ziemann and Buyukkokten were the majority stockholders in AEI. Further, pursuant to the Retention Agreement, Ziemann and Buyukkokten were elected to AEI's Board of Directors.

15. Thereafter, on August 30, 2002, AEI and Stanford entered into an agreement for the development of a social networking tool for the Stanford Alumni Association website.

Buyukkokten Formally Assigns All of His Rights to Social Networking Technology to AEI

16. On September 11, 2002, approximately one month after AEI's incorporation, defendant Buyukkokten formally assigned to AEI, in writing, all of his rights, title and interest in Club Nexus and the social networking technology he had created with Ziemann.

This assignment included, among other things, an assignment of all rights in any trade secrets or other confidential or proprietary information related to the technology. The assignment was completed through a Bill of Sale to AEI in which Buyukkokten transferred, assigned and conveyed all the assets that were described in the Exhibit A attached to that Bill of Sale. These assigned assets included:

> All inventions, original works of authorship, developments, concepts, know-how, improvements, processes and formulae relating to network relationship software and management system (the "Technology"), whether or not patentable or registerable under copyright, trademark or similar laws.
>
> All intellectual property rights relating to the Technology, including without limitation, all rights to patents, patent applications, utility models or certificates of invention, rights to trademarks, service marks, trade drafts or logos, trade secret rights, copyrights, moral rights, author's rights, rights of publicity, contract and licensing rights, goodwill and all other intellectual property rights as may exist now or hereafter come into existence, regardless of whether such rights arise under the laws of the United States or any other state, country or jurisdiction or any international conventions.
>
> All business and marketing plans, worldwide marketing rights, software, customer and supply lists, price lists, mailing lists, customer and supply records and other confidential or proprietary information relating to the Technology.

Google Hires Buyukkokten As An Engineer Knowing that Buyukkokten Had Previously Developed and Would Continue to Develop Social Networking Technology for Another Company

17. After Ziemann and defendant Buyukkokten graduated from Stanford, Ziemann continued to work solely for AEI without salary but did receive a small stipend. Buyukkokten, who on information and belief is a Turkish citizen, claimed that he needed to find outside employment for financial support and because his student visa would expire after his graduation from Stanford. Buyukkokten stated that he needed Google's assistance in obtaining a work permit to remain in the United States.

18. While defendant Buyukkokten attended Stanford, he had developed personal relationships with Larry Page and Sergey Brin, co-founders of Google, who were also former students in the computer science program at Stanford. On information and belief, through his relationships with Page and Brin, Buyukkokten interviewed with Google, received a job offer

as a software engineer, and accepted Google's offer shortly thereafter.

19. On numerous occasions, defendant Buyukkokten assured C2C and AEI that "Google is a safety net for me," and that "my main reason [for not joining] Affinity Engines is my Green Card status." Buyukkokten orally assured C2C and AEI that he planned to quit Google and join AEI full-time once AEI raised initial financing, could pay him a salary, and could obtain a work visa for him. Buyukkokten also told AEI and C2C that he was committed to AEI and agreed to provide part-time programming and consulting services to AEI with respect to its social networking technology and the development of the Stanford Alumni Association website.

20. C2C and Ziemann were concerned that if defendant Buyukkokten was to join Google, he would be unable to continue to develop the new Stanford Alumni Association website for AEI without causing intellectual property problems with Google.

21. As part of his offer of employment, defendant Buyukkokten received a packet of documents from Google. One such document was an "Employment, Confidential Information and Invention Assignment Agreement," that required, among other things, that Buyukkokten complete an attached "List of Prior Inventions and Original Works of Authorship." On or about May 2002, defendant Buyukkokten provided the employment packet to C2C and AEI so they could help Buyukkokten delineate the list of prior inventions and concepts to be expressly withheld from Google. C2C and AEI furnished Buyukkokten with the completed list of prior inventions, which detailed the social networking software and technology that Buyukkokten had assigned to AEI. These intellectual property rights and prior inventions were the sole property of AEI and were not to be used by, nor disclosed to, Google. Buyukkokten did not object to any of the prior inventions that were listed as the sole property of AEI. On information and belief, Google also did not object to the list of prior inventions Buyukkokten submitted to Google.

22. When C2C and Ziemann provided the list of prior inventions to defendant Buyukkokten, Buyukkokten orally assured AEI that his employment with Google would not impede the continued development and progress of AEI, nor would he be working on any social networking projects while at Google. Buyukkokten gave complete assurances to C2C and

Ziemann that his employment with Google would not compete or conflict with his role as co-founder of AEI or as software developer of inCircle, or any other future social networking products of AEI. Buyukkokten informed both Ziemann and C2C that he had signed Google's employment agreement with the list of prior inventions prepared by C2C attached to it, expressly reserving for the benefit of AEI all rights he had to any social networking trade secrets and source code he had created or would create in the future for AEI.

23. Defendant Buyukkokten also informed C2C and Ziemann that he had personally discussed his work concerning Club Nexus with Larry Page and Sergey Brin, and that they had no problem with him continuing to work with AEI on social networking software on his own time, since it was not an area in which Google was interested.

AEI's Development of the inCircle Website and Software Took More than Two Years

24. Beginning after his graduation from Stanford, defendant Buyukkokten wrote the inCircle software and source code for AEI to meet the specifications agreed upon with the Stanford Alumni Association. While inCircle contained some of the concepts of Club Nexus, it was a new software program, entirely different from Club Nexus. Club Nexus was originally coded in Java, a programming language developed by Sun Microsystems. In contrast, Buyukkokten chose to implement inCircle using Microsoft's C# programming language and Microsoft's .NET programming framework. Stanford introduced inCircle to a portion of its alumni on a test basis in January 2003. The reaction of alumni to the test site was positive.

25. On June 4, 2003, defendant Buyukkokten stated that "[i]t took me over two years to bring the technology of our [inCircle] product to where it is." AEI's development of the inCircle website and software involved a substantial commitment and investment of time, money, and resources over more than two years as of mid-2003.

26. In the spring of 2003, based on the success of the Stanford inCircle launch, AEI also signed up a number of other potential customers, including the University of Southern California Alumni Association.

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Buyukkokten Provides Additional Assurances That His Work At Google Does Not Conflict With His Obligations and Duties to AEI, and Reaffirms the Assignment of All of His Rights in the Social Networking Technology to AEI

27. AEI sought additional assurances from defendant Buyukkokten that his continuing work for AEI in developing inCircle was not in conflict with his employment with Google. Buyukkokten told AEI that there was no conflict between his employment at Google and his continuing work for AEI, including his assignment of all intellectual property rights to social networking software. In furtherance of these assurances, Buyukkokten executed a second assignment agreement with AEI on or about July 9, 2003. As with the September 22, 2002 assignment, this second agreement again included an assignment of all trade secrets and other intellectual property related to the Club Nexus and inCircle social networking technology. Buyukkokten's second assignment agreement to AEI provided in relevant part that:

> I confirm that all software code and product design improvements which I have written or made to the Technology (as defined in Appendix A to Exhibit A of the Stock Purchase Agreement dated September 11, 2002 between me and Affinity Engines, Inc. (the "SPA")) is and will remain the sole property of Affinity Engines, Inc. Furthermore, I agree that if Affinity Engines, Inc. specifically requests in writing that I write or make any additional software code and/or product design improvements in the future with respect to the Technology and I accept in writing any such assignments, any such software code and/or product design improvements I make shall be the sole property of Affinity Engines, Inc.

28. At the time of this assignment in July 2003, defendant Buyukkokten remained a consultant to AEI, a member of the AEI Board of Directors, and a major stockholder in AEI. The assignment was in consideration for stock in AEI and continuing obligations to assign inventions and intellectual property to AEI. In connection with the execution of this second assignment agreement, Buyukkokten engaged separate legal counsel to review the assignment and related documents. On information and belief, after such review, and with advice of counsel, Buyukkokten signed the second assignment, allowing for further vesting of his AEI shares.

Buyukkokten Acknowledges AEI's Ownership of Social Networking Technology

29. In early 2003, other social networking websites started to appear on the Internet, most notably Sunnyvale, California-based Friendster, Inc., which was focused primarily

on dating. Although a new company with a small amount of funding and only a handful of employees, Friendster began to attract media attention due to its claim of very rapid growth in the number of its members. Around this time, defendant Buyukkokten proposed to AEI that it develop a competing website to Friendster focused on dating, tentatively called "Corcle.com" or "Korcle.com," by modifying the inCircle software AEI had developed, which Buyukkokten had assigned to AEI. Buyukkokten wanted this website to be open to the public rather than limited to university alumni as was AEI's Stanford inCircle product, and to focus on dating and social events similar to Friendster. Buyukkokten registered the web domain names "Corcle.com" and "Korcle.com" with Network Solutions on June 13, 2003 for this purpose. AEI and Buyukkokten subsequently agreed that modifying inCircle to create a public dating site such as Corcle.com was part of AEI's long-term strategy, but also agreed to focus initially on its university alumni association/closed affinity group strategy. AEI did not agree at that time to launch a Friendster-like product.

30. On information and belief, without informing AEI, defendant Buyukkokten and another Stanford-educated computer science engineer, Clayton Jones ("Jones"), who was not affiliated with AEI, continued secretly to modify the inCircle software to create an open dating website ("Corcle.com") in June and July of 2003. Without authorization from AEI, on information and belief, Buyukkokten used inCircle software, which was hosted on a computer server located at Buyukkokten's apartment, as the foundation for the Corcle.com website. On information and belief, Buyukkokten was promoting his Corcle.com website to others despite intentionally concealing his development efforts from AEI.

31. In August 2003, AEI discovered that defendant Buyukkokten and Jones had launched the Corcle.com website. AEI objected, reminding Buyukkokten that he had assigned all his rights to social networking products and ideas to AEI, and that he owed a fiduciary obligation to AEI as a member of its Board of Directors not to compete with AEI or use its trade secrets or other confidential information.

32. Acknowledging AEI's rights to inCircle and Corcle.com as well as AEI's rights to all social networking technology previously assigned to AEI, Buyukkokten shut down

the Corcle.com website in response to AEI demands in August 2003.

33. Buyukkokten gave AEI assurances that he would stop supporting or working on Corcle.com. On information and belief, Buyukkokten continued his development efforts on Corcle.com and used AEI's proprietary software to facilitate and expedite its development. Moreover, on information and belief, once Google expressed an interest in developing a social networking website in late fall 2003, Buyukkokten used his programming work on Corcle.com to develop Orkut.com, which included AEI's proprietary software and source code.

34. In July 2003, based on oral statements and written assurances from defendant Buyukkokten, AEI was led to believe that Buyukkokten was not involved in any software development efforts related to social networking at Google.

Google Becomes Interested in Acquiring Social Networking Technology

35. Larry Page, Sergey Brin and other Google employees and engineers had become very familiar with Club Nexus and inCircle. Indeed, defendant Buyukkokten provided a demonstration of Club Nexus to Google in 2002 and invited Page, Brin and other Google employees who were Stanford alumni to sign up as inCircle members in 2003, when inCircle was initially launched. Page did not join but Brin did, as did more than eighty other Google employees and engineers who had graduated from Stanford.

36. During the fall of 2003, interest in social networking companies continued to increase. On information and belief, during this same time period, Google began to evaluate whether it should acquire Friendster or some other social networking company. On information and belief, Google knew that defendant Buyukkokten had developed two other social networking websites, Club Nexus and inCircle, and asked Buyukkokten to evaluate Friendster as a potential acquisition candidate for Google. In September 2003, Buyukkokten confirmed to AEI that he was involved in evaluating Friendster for Google. On information and belief, Buyukkokten performed his evaluation of Friendster for Google in September and October 2003.

37. Between August and September 2003, defendant Buyukkokten asked Ziemann if AEI was for sale and asked how much Google would have to pay to acquire AEI.

Ziemann said that AEI would entertain any offer by Google to acquire AEI. No such offer was ever made by Google.

38. On information and belief, in October 2003, Google made an offer to acquire Friendster for $30 million, but Friendster declined Google's offer.

39. On information and belief, after turning down Google's acquisition offer of $30 million, Friendster instead accepted $13 million in additional financing from venture capitalist firms of Kleiner Perkins Caufield & Byers ("Kleiner Perkins"), Benchmark Capital and Battery Ventures at a reported $40 million pre-money ($53 million post-money) valuation. On information and belief, this financing occurred in early November 2003, shortly after Friendster declined Google's offer.

40. On information and belief, having lost the opportunity to buy Friendster and having learned that Kleiner Perkins, one of Google's own lead investors, and other venture capital firms had placed a higher valuation on Friendster than Google's acquisition offer, Google instead turned to defendant Buyukkokten to develop a social networking product for Google. This product later became known as Orkut.com.

AEI Demands The Return of Its Property From Buyukkokten; Buyukkokten Does Not Comply And Suddenly Resigns From AEI Board of Directors; Google Launches Orkut.com Three Months Later

41. On September 25, 2003, based on defendant Buyukkokten's recent admitted involvement in evaluating potential social networking acquisitions for Google, AEI sent an email to Buyukkokten which included the following request:

> Given all of the recent news/activity, I'm going to need you to delete from your computer all inCircle and Club Nexus data. In addition, I will need you to hand over all of your Club Nexus and inCircle CDs as they are company property. I will be sending you a legal form to sign, certifying that you have done as such.

42. Later that same day, defendant Buyukkokten responded to AEI's e-mail and refused to return the CDs, despite the fact that the materials were AEI's property. Buyukkokten told AEI to "stop being so paranoid. We are on the same side." In a subsequent phone conversation with Ziemann, Buyukkokten again assured AEI that he was not working on a

social networking product for Google, but only an evaluation of Friendster. During 2003, Buyukkokten did not return any of AEI's trade secret software programs or source code, nor did Buyukkokten advise AEI that he had deleted any of the AEI files from his computer.

43. On October 15, 2003, defendant Buyukkokten resigned from AEI's Board of Directors. Unknown to AEI at the time and on information and belief, prior to resigning from AEI's Board of Directors, Buyukkokten had been working on a competing social networking website for Google. On information and belief, Buyukkokten copied and otherwise used inCircle source code still in his possession. On information and belief, Buyukkokten also copied and otherwise used source code from Corcle.com still in Buyukkokten's possession, which was copied, developed or derived from inCircle software and source code.

44. Even though defendant Buyukkokten resigned from AEI's Board of Directors on October 15, 2003, Buyukkokten was still considered by AEI to be a consultant regarding the development of inCircle because Buyukkokten promised to continue providing consulting services to AEI. In December, 2003, Buyukkokten again gave assurances that he would provide consulting services to AEI.

45. In early January 2004, AEI contacted defendant Buyukkokten and requested programming assistance with respect to the inCircle code. For the first time, Buyukkokten refused to provide any assistance to AEI claiming that he was "swamped with work right now, [he didn't] have time to help." When AEI inquired further as to when Buyukkokten would be available to provide the promised assistance to AEI, Buyukkokten responded that he "won't have time to work on inCircle until I get back from vacation. I honestly don't have time right now to help out and it doesn't look like me [sic] schedule is going to get any better the next couple of weeks [sic]." At no time during his communications with AEI prior to January 22, 2004 did Buyukkokten reveal that he was developing Google's social networking website, Orkut.com. On information and belief, Buyukkokten ignored his fiduciary obligations to AEI while developing Orkut.com.

46. Google launched its social networking website, Orkut.com, on January 22, 2004.

The Rapid Development of the Orkut.Com Website Indicates Use of AEI Trade Secrets and Other Confidential Information

47. Despite having previously told AEI that as of June 4, 2003, defendant Buyukkokten spent "over two years [bringing] the technology of [inCircle] product to where it is," defendants Google and Buyukkokten claim to have developed a nearly identical website in only three months. Google and Buyukkokten claimed that the development of the software code was done almost completely by Buyukkokten working only on his "20% personal time" or the equivalent of one day a week. Google claimed that "cleaning up" the product took up the bulk of a few months.

48. In an interview given at the World Economic Forum in Davos, Switzerland and published on the website "Always On Networks" on March 7, 2004, Google co-founder Sergey Brin was quoted as saying the following in response to the question regarding Google's new Orkut.com website:

> **Q:** *Your new social network experiment is a way to lock in at least some people, right?*
>
> **Brin:** *Yes. We have this one engineer who had built a similar system, and we asked whether we could put together a prototype. Then we spent a few months cleaning it up. There is not a deep strategy.*

49. The Orkut.com website is in many ways identical to, and strongly resembles, inCircle and Club Nexus. (Exhibit A to this Complaint contains examples of web pages for Club Nexus and Orkut.com). Upon information and belief, defendants Buyukkokten and Google did not accomplish the rapid development of the Orkut.com social networking software without improperly utilizing Buyukkokten's access to AEI's trade secret and confidential information. As admitted by Google's co-founder Sergey Brin, Buyukkokten delivered to Google a "prototype" of the product based on a similar system previously developed by Buyukkokten for AEI, and Google then spent "a few months" between mid-October, 2003 and January 22, 2004 "cleaning it up." Brin's statement, made in his capacity as an official spokesperson for Google, acknowledges that Google took Buyukkokten's existing prototype – which on information and belief was the software and code that Buyukkokten had developed for

AEI – and "cleaned it up" for its January 22, 2004 launch.

AEI's First Notice of Orkut.com

50. On January 22, 2004, defendant Google threw a launch party to celebrate the launch of the Orkut.com website. During the party, Ziemann called defendant Buyukkokten on his cell phone, unaware of Google's launch of Orkut.com. Apparently assuming that Ziemann had just learned of the website, Buyukkokten's first comment to Ziemann was "I hope you aren't mad at me" to which Ziemann replied "Why would I be mad at you?" For the first time, Buyukkokten then admitted his role in Google's launch of Orkut.com, and assured Ziemann that Google would not compete with AEI, since it was intended to be a "Friendster killer." Ziemann then examined the Orkut.com website and immediately went to discuss the matter with AEI.

51. Defendant Buyukkokten's conversation with Ziemann on January 22, 2004 was the first notice to AEI that Buyukkokten had worked for Google to create a social networking site of any kind.

AEI's Demands that Buyukkokten Return AEI's Property

52. Following the launch of Orkut.com and Ziemann's January 22, 2004 conversation with defendant Buyukkokten, AEI promptly sent a letter on February 6, 2004 to Buyukkokten. In this letter, sent by AEI President and Chief Executive Officer Brian Samuels, AEI reminded Buyukkokten of the fiduciary duties he owed to AEI. In addition, AEI reminded Buyukkokten that he had assigned to AEI all right, title and interest in all inventions relating to social networking software, and that he was obligated to hold AEI's trade secret and confidential information in the strictest confidence. Buyukkokten did not reply to Mr. Samuels.

53. The launch of the Orkut.com website on January 22, 2004 came as a surprise to everyone at AEI. AEI was unprepared for the market reaction to the launch of Orkut.com. By affiliating Orkut.com with Google, the market extended immediate credibility to the Orkut.com website and social networking services. Subscriptions to the Orkut.com website increased dramatically from January 22, 2004 until March 22, 2004 when more than 180,000 subscribers had already logged onto and registered on the Orkut.com site. On information and belief, the total number of Orkut.com users to date has now exceeded 375,000.

54. The effect of the Orkut.com launch and affiliation with defendant Google has been extremely negative to AEI. While AEI will continue to produce a viable product within the university alumni market space, Google's launch of a social networking product, Orkut.com, using AEI's trade secret and other confidential information, has severely and irreparably harmed AEI.

55. Shortly after Orkut.com's launch, AEI demanded for the second time that defendant Buyukkokten immediately return all AEI property in his possession, including all confidential and/or proprietary information, AEI source code and other computer software related materials owned by AEI. Buyukkokten again refused to return these materials to AEI. Instead, Buyukkokten turned over these materials to Google's legal counsel, despite the fact that Buyukkokten is not represented individually by Google's counsel and has separate counsel. On information and belief, Buyukkokten turned over a hard disk drive and 34 CD-ROMs to Google's legal counsel the morning of March 16, 2004. Despite repeated requests, Google's counsel has refused to return these confidential and proprietary materials to AEI. Google's counsel would only agree to provide a copy of the materials to AEI.

AEI's Discovery of Common Bugs Between inCircle and Orkut.com

56. Shocked by the rapid creation and deployment of the Orkut.com website in light of defendant Buyukkokten's admitted development time of more than two years for the inCircle product, and concerned by Buyukkokten's failure to disclose his activities with Google, AEI investigated the Orkut.com website and software. In its initial investigation, AEI uncovered a total of nine unique software "bugs," or unique idiosyncratic software behaviors, in AEI's inCircle product that were also present in Orkut.com. The presence of these "bugs" in both products is highly indicative of a common source code. On information and belief, Orkut.com contains software and source code copied, developed, or derived from AEI's inCircle software or source code.

57. Although AEI has initially and preliminarily identified many bugs common to both programs, the following four examples demonstrate the use of common source code between inCircle and Orkut.com:

(a) **The Formatting Mini-Language.** Orkut.com offers a formatting mini-language feature that is virtually identical to the formatting mini-language feature offered by AEI's inCircle product. (Attached to this Complaint as Exhibit B). The mini-language feature allows users to customize aspects of the website's appearance. Both websites use a small set of tags (*i.e.*, a mini-language), such as square brackets ("[" and "]") instead of carrots ("<" and ">") for HTML formatting, and the word "link" to create a website link. The mini-language exhibits several unique and idiosyncratic behaviors that are present in both Orkut.com and inCircle.

(b) **The Profile Date Bug.** In AEI's inCircle and in Orkut.com, profile dates are parsed incorrectly. (Attached to this Complaint as Exhibit C). For example, inCircle and Orkut.com incorrectly translate birthdates such as 4/22 into "April 22th." Birthdates such as 4/1 and 4/2, however, are translated correctly into "April 1st" and "April 2nd," respectively. inCircle and Orkut.com allow birthdates such as 2/31 to be registered, which both sites incorrectly translate into "February 31th." This inconsistent behavior has been noted by Orkut.com users in the Orkut.com forum.

(c) **The Last-Post Bug.** In AEI's inCircle, messages posted to the forum update the number of posts ("Posts" field) and the time of the last post ("Last Post" field) to reflect the new total number of posts and the new time and date. When messages are subsequently deleted from the forum, AEI's inCircle forum reverts to the previous number of posts ("Post" field) but incorrectly fails to revert to the time and date of the last post. Orkut.com exhibits precisely the same behavior when messages are removed from the forum. (Attached to this Complaint as Exhibit D).

(d) **The Excessive Mail Recipient Bug.** AEI's inCircle and Orkut.com exhibit an idiosyncratic behavior in the message preview screen when a message is sent to a large number of recipients. For messages which are sent to 99 or 100 individual recipients, the preview screen displays a list of those recipient names in the "Recipients" field of the message preview. However, for messages which are sent to 101 or 102 individual recipients, the preview screen summarizes the total number of recipients and it does not list those recipients individually. Orkut.com exhibits precisely the same behavior. The fact that the mail preview screen lists mail recipients as individuals for messages with less than 101 recipients but summarizes mail recipients for messages with 101 recipients is a unique feature of AEI's inCircle code. (Attached to this Complaint as Exhibit E).

58. On March 8, 2004, AEI's counsel sent a letter to Google's general counsel that identified nine bugs and described them in substantial detail. AEI further advised Google that the presence of these bugs raised serious concerns regarding defendants Google and Buyukkokten's unlawful and unauthorized use of AEI software and source code from the inCircle product as well as other confidential and proprietary information of AEI. Since that initial letter, AEI has discovered additional bugs common to the Orkut.com website and AEI's product. On information and belief, most of the common bugs found in AEI's software and in the Orkut.com website originated in non-public .NET source code owned by AEI. These bugs indicate that the websites are based on common source code. In addition, aspects of the user interface for the two websites, such as the "About" pages explaining the sites and some of the graphics, are virtually identical. (Attached to this Complaint as Exhibit A).

Orkut.com Has Been a Major Success for Google

59. Orkut.com has been a great success for defendant Google, and Google has greatly benefited from the favorable publicity the launch of Orkut.com generated. In public statements, Google has stated that Orkut.com was developed by defendant Buyukkokten and that Google owns all rights to Orkut.com. Google management has also said publicly that Orkut.com will become a part of Google and its search technology in the near future. In a speech at the PC Forum event in Las Vegas, Nevada on March 22, 2004, Google's CEO, Eric Schmidt, announced that Google now views social networking as a key part of its future Internet search technology and that it was "typical" that successful Google beta-tested products such as Orkut.com would be incorporated into Google's website "within a year." As quoted in a News.com article on the same date, Schmidt also said that social networking services "are a natural complement to the sort of automated searches that Google now provides, because they allow visitors to connect to experts or at least to people with knowledge."

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60. Defendant Google reaped a substantial advantage and benefited because it did not need to spend $30 million or more to acquire Friendster or AEI in October 2003 to obtain the technology to enter into the social networking business. Google also avoided the time and expense of independently developing its own social network software by relying on defendant Buyukkokten, knowing he had access to AEI trade secrets and confidential information. On information and belief, Google and Buyukkokten used the AEI trade secrets and confidential information, including the inCircle source code, to create Orkut.com. This "free" head start gave Google an early and critical entry into the social networking business. By doing so, given Google's enormous market presence and number of users, Google and Buyukkokten did tremendous harm and injury to AEI and threatened the viability of its business.

61. Defendant Google knowingly used defendant Buyukkokten's affiliation with AEI and knew or should reasonably have known that by using AEI trade secrets, Google sought to take advantage of an unfair head start in developing Orkut.com. Sergey Brin and more than eighty other Google employees are registered members of inCircle and were familiar with the operation and success of the Stanford website. Brin publicly referred to Buyukkokten as having "a prototype" of a social networking product which could be "cleaned up" in "a few months." This Google "prototype," which was owned and was the property of AEI, was used by Google and Buyukkokten in order to develop Orkut.com in a very short time. Google and Buyukkokten's actions have harmed AEI and its future business prospects.

AEI Has Taken Reasonable Steps to Protect Its Trade Secrets

62. Through its efforts and investment, AEI has developed trade secret and confidential software and source code related to the specialized social networking service software that it designs and licenses, including but not limited to the technology assigned by defendant Buyukkokten to AEI and the source code for the inCircle and Club Nexus products. This information is crucial to producing software that allows the complex interactions provided by AEI's social networking product offerings.

63. AEI has not published or otherwise revealed to others outside of its company the contents of its trade secret and confidential information, unless the party receiving

such information has specifically agreed to protect its confidentiality or is otherwise in a fiduciary relationship to AEI.

64. AEI's trade secret and confidential information is extremely valuable to AEI because of the great amount of time and money AEI has invested in developing it. The secrecy of this information gives AEI an advantage over its competitors because such information is very difficult, and at times impossible, to ascertain through reverse engineering, and because of the substantial investment of time and effort required of a competitor to legitimately attempt to replicate AEI's results.

65. AEI has taken reasonable precautions to ensure the confidentiality of its trade secret and confidential information.

66. The software code and other confidential information described above are trade secrets of AEI because they derive independent economic value from not being generally known to the public and because AEI has undertaken reasonable precautions to preserve their secrecy.

FIRST CAUSE OF ACTION

(Misappropriation of Trade Secrets Against All Defendants)

67. AEI hereby alleges and incorporates by reference paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein.

68. AEI enjoys an advantage over its existing and would-be competitors in the design, development and offering of social networking services via the Internet because of its creation and ownership of the highly confidential software and technology that makes up the inCircle and Club Nexus software. This information derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and constitutes trade secrets belonging to AEI. AEI has taken reasonable efforts under the circumstances to preserve the confidentiality of its trade secrets.

69. Defendants acquired AEI's trade secrets from persons they knew or reasonably should have known owed a duty to maintain in secrecy AEI's trade secrets, or acquired AEI's trade secrets through improper means. Defendants subsequently used this

information in connection with their own business activities, and not on behalf of AEI.

70. Defendants used and are presently using AEI's trade secrets without AEI's express or implied consent, authorization or authority.

71. Defendants obtained the trade secret information described above directly or indirectly from AEI and not from the defendants' own independent research and efforts.

72. Each of the acts of misappropriation was done willfully and maliciously by the defendants, thereby entitling AEI to exemplary damages pursuant to Cal. Civ. Code § 3426.3(c).

73. As a direct and proximate cause of the defendants' misappropriation of AEI's trade secrets, the defendants have been unjustly enriched and AEI has sustained damages in an amount to be proven at trial and, at a minimum, AEI is entitled to no less than a reasonable royalty.

74. AEI also has suffered irreparable harm as a result of the defendants' threatened and actual misappropriation, and AEI will continue to suffer irreparable injury, such as loss of market timing, that cannot be adequately remedied at law unless the defendants, and their officers, agents and employees, and all other persons acting in concert with them, are enjoined from engaging in any further such acts of misappropriation.

SECOND CAUSE OF ACTION

(Common Law Misappropriation Against All Defendants)

75. AEI hereby alleges and incorporates by reference paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.

76. AEI has invested substantial time and money in developing the ideas and concepts related to and associated with the inCircle and Club Nexus websites, which the defendants have unlawfully misappropriated at little or no cost.

77. As a direct and proximate cause of defendants' misappropriation, defendants have been unjustly enriched and AEI has sustained damages in an amount to be proven at trial.

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78. AEI has suffered irreparable harm as a result of defendants' acts and will continue to suffer irreparable injury that cannot be adequately remedied at law unless the defendants, and their officers, agents and employees, and all persons acting in concert with them, are enjoined from engaging in any further such acts of misappropriation.

79. The defendants' actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from the defendants in an amount sufficient to punish each of them, and deter others from engaging in similar wrongful conduct.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty Against Defendant Buyukkokten)

80. AEI hereby alleges and incorporates by reference paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

81. Defendant Buyukkokten, by virtue of his positions as a co-founder and member of the Board of Directors of AEI, and as a major shareholder in AEI, was in a confidential and fiduciary relationship with AEI and owed AEI the highest obligations of good faith, integrity, due care, fair dealing and candor. As such, Buyukkokten had an obligation to act primarily for the benefit of AEI in all matters connected with the protection of AEI's trade secrets and intellectual property. Among Buyukkokten's duties as AEI's fiduciary was a duty not to act as, or on account of, an adverse party without AEI's consent and a duty not to compete with AEI. Defendant Buyukkokten also owed AEI an undivided duty of loyalty to act in the best interests of AEI and to refrain from transferring his loyalty to a competitor or from any conduct not in the best interests of AEI.

82. Defendant Buyukkokten has unjustifiably and inexcusably breached his fiduciary duty and his duty of loyalty to AEI by, among other things, undertaking competitive activities, and conspiring with others to engage in competitive activities, against AEI. These competitive activities have and will work to the detriment of AEI.

83. In addition, defendant Buyukkokten violated his fiduciary duty and his duty of loyalty to AEI by breaching his confidentiality obligations to AEI through his improper

use and disclosure of AEI's trade secret and confidential information, including but not limited to AEI's inCircle software and source code.

84. As a result of defendant Buyukkokten's wrongful conduct, AEI has been damaged in an amount to be proven at trial.

85. Defendant Buyukkokten's actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from Buyukkokten in an amount sufficient to punish him, and deter others from engaging in similar wrongful conduct.

FOURTH CAUSE OF ACTION

(Breach of Written Contract Against Defendant Buyukkokten)

86. AEI hereby alleges and incorporates by reference paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

87. The September 2002 Bill of Sale Agreement that defendant Buyukkokten entered into with AEI assigned to AEI all inventions, intellectual property and business and marketing plans with respect to the social networking software. Buyukkokten agreed, among other things, that he would not use any of the assigned inventions, intellectual property and/or business and marketing plans with respect to AEI's social networking software in conjunction with his employment at Google. This agreement constitutes a valid and binding written contract between AEI and Buyukkokten. AEI has performed all of its obligations under this contract.

88. The July 2003 Assignment Agreement that defendant Buyukkokten entered into with AEI reaffirms that all of the intellectual property associated with the AEI social networking software is and will remain the sole property of AEI, and that Buyukkokten will not use this intellectual property in his employment at Google. The Assignment Agreement constitutes a valid and binding written contract between AEI and Buyukkokten. AEI has performed all of its obligations under this contract.

89. Defendant Buyukkokten has unjustifiably and inexcusably breached his obligations under both the September 2002 Bill of Sale Agreement and the July 2003 Assignment Agreement by misappropriating and facilitating the misappropriation of AEI's trade secrets,

confidential information, and other intellectual property.

90. As a result of these breaches, AEI has been damaged in an amount to be proven at trial. AEI is also entitled to specific performance and injunctive relief enjoining defendant Buyukkokten from further improper use and disclosure of AEI trade secrets and confidential information.

FIFTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing Against Defendant Buyukkokten)

91. AEI hereby alleges and incorporates by reference paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.

92. The law implies a covenant of good faith and fair dealing by which defendant Buyukkokten promised to perform fairly, honestly and reasonably the terms and conditions of the above-described contracts, and to refrain from doing any act that would harm, disrupt or damage AEI's trade secret and confidential information.

93. Defendant Buyukkokten engaged in wrongful conduct separate and apart from, and contrary to, the performance of his obligations under the above-described contracts, in bad faith, arbitrarily and unfairly, and for the purpose of depriving AEI of rights and benefits under the contracts.

94. As a direct, foreseeable and proximate result of the breach by defendant Buyukkokten of the implied covenant of good faith and fair dealing, AEI has been damaged in an amount to be proven at trial.

95. Defendant Buyukkokten's actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from Buyukkokten in an amount sufficient to punish him, and deter others from engaging in similar wrongful conduct.

SIXTH CAUSE OF ACTION

(Intentional Interference With Contractual Relations Against Defendant Google)

96. AEI hereby alleges and incorporates by reference paragraphs 1 through 95, inclusive, of this Complaint as though fully set forth herein.

97. At all relevant times, AEI and defendant Buyukkokten had valid written agreements concerning the ownership, use and confidentiality of certain intellectual property belonging to AEI, as alleged above. Defendant Google knew of the contracts between AEI and Buyukkokten and intentionally and wrongfully induced, and proximately caused, breaches of those agreements.

98. As a result of defendant Google's intentional interference with these contracts, AEI has been damaged in an amount to be proven at trial.

99. Defendant Google's actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from the defendants in an amount sufficient to punish each of them, and deter others from engaging in similar wrongful conduct.

SEVENTH CAUSE OF ACTION

(Intentional Interference with Prospective Economic Relations Against All Defendants)

100. AEI hereby alleges and incorporates by reference paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

101. AEI had a reasonable probability of prospective economic advantage from customers and prospective customers of its social networking software technology and product suite. These customers and prospective customers included, for example, alumni associations at major universities. The defendants knew of these prospective economic relationships and intentionally and wrongfully induced, and proximately caused, disruptions of those relationships.

102. The independently wrongful conduct of the defendants as alleged above, including but not limited to the misappropriation of AEI trade secrets, confidential information, and other intellectual property, constitutes tortious interference with AEI's prospective economic relationships because the defendants were able to launch their competitive social networking website, Orkut.com, which resulted in lost sales and/or opportunity for AEI.

103. As a result of the defendants' conduct, AEI has been damaged in an amount to be proven at trial.

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104. Defendants' actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from the defendants in an amount sufficient to punish each of them, and deter others from engaging in similar wrongful conduct.

EIGHTH CAUSE OF ACTION

(Conversion Against All Defendants)

105. AEI hereby alleges and incorporates by reference paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

106. At all relevant times, AEI is and was the lawful owner of the inCircle and Clus Nexus social networking software, and all copies of that software including, but not limited to, the 34 CD-ROMs wrongfully retained by the defendants.

107. As described above, the defendants converted AEI's social networking software and technology by unlawfully acquiring possession of one or more computer files containing AEI's computer source code and exercising dominion and control over the source code in an unlawful and unauthorized manner, to the exclusion of and inconsistent with AEI's rights.

108. Except for defendant Buyukkokten, at no time has AEI consented to any of the defendants possessing its social networking software code and technology. At no time has AEI consented to any use by defendant Buyukkokten of AEI's social networking software code and technology, except for the benefit of AEI.

109. As a direct and proximate result of the defendants' acts of conversion, AEI has sustained damages in an amount to be proven at trial. AEI has also suffered irreparable injury as a result of the defendants' conversion and will continue to suffer irreparable injury unless the defendants are enjoined from utilizing the fruits of their conversion.

110. The defendants' actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from the defendants in an amount sufficient to punish each of them, and deter others from engaging in similar wrongful conduct.

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111. AEI is also entitled to the return of all AEI property, including the 34 CD-ROMs wrongfully retained by the defendants and all copies of AEI's social networking software and source code in the defendants' possession.

NINTH CAUSE OF ACTION

(Fraud and Deceit Against Defendant Buyukkokten)

112. AEI hereby alleges and incorporates by reference paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.

113. Defendant Buyukkokten has made knowingly false and misleading representations and omissions of material fact to AEI as a part of a scheme to unlawfully exploit and use AEI's trade secrets and other confidential information relating to AEI's social networking software. Buyukkokten was successful in maintaining his scheme only by misrepresenting and concealing his plans and activities.

114. In September 2002, defendant Buyukkokten assigned to AEI all of his rights, title and interest in Club Nexus and the social networking technology he had created with Ziemann. At that time, Buyukkokten agreed not to use the social networking technology he had created with Ziemann in connection with his employment at Google, or to compete against AEI.

115. During the summer of 2003, without informing AEI, defendant Buyukkokten used the inCircle software to secretly develop and launch a social networking website to be called Corcle.com. After discovering and objecting to Corcle.com shortly after its launch, Buyukkokten acknowledged that his activities were in conflict with AEI and agreed to stop developing the Corcle.com website.

116. Again in July 2003, defendant Buyukkokten provided additional assurances that he was not involved in any software development efforts related to social networking at Google, and his work at Google did not conflict with any of his obligations and continuing work for AEI in developing inCircle. Not only did Buyukkokten provide oral assurances to such effect, but he also executed a second assignment agreement with AEI. In the agreement, Buyukkokten assigned all of his rights, title and interest in Club Nexus, inCircle, and the social networking technology, including improvements, he had created with Ziemann to AEI.

117. In September 2003, AEI requested that Buyukkokten return all of the CD-ROM discs he had that contained AEI's source code. Buyukkokten responded by telling AEI to "stop being so paranoid. We are on the same side." In a subsequent phone conversation with Ziemann, Buyukkokten again assured AEI that he was not working on a social networking product for Google.

118. These aforementioned statements were false and misleading because, at the time they were made, defendant Buyukkokten was developing software, including the Corcle.com social networking website, to be used for defendant Google in direct competition with AEI.

119. Defendant Buyukkokten was in a fiduciary and confidential relationship to AEI as alleged above. This fiduciary and confidential relationship required Buyukkokten to make full and complete disclosure of any and all material facts within his knowledge relating to his obligations to AEI and relating to the social networking software he had created for AEI. Buyukkokten breached this duty by failing to disclose his efforts to develop the software, including the Corcle.com website, that would be used by Google in direct competition with AEI.

120. Defendant Buyukkokten made these false representations of fact and material omissions of fact to AEI with the intent to induce AEI, among other reasons, (1) to retain Buyukkokten as a consultant for AEI in the continued development of AEI's social networking technology, (2) to allow Buyukkokten to hold a position on the Board of Directors for AEI, and (3) to continue to allow Buyukkokten access to AEI's trade secrets and other confidential information with respect to AEI's social networking technology. Buyukkokten knew that he would lose his fiduciary position and relationship with AEI if AEI learned the truth about his activities with Google and Orkut.com and his misuse of AEI's intellectual property.

121. AEI reasonably and justifiably relied upon defendant's Buyukkokten's false and misleading representations to its detriment. At the time of Buyukkokten's misrepresentations and suppressions of facts, AEI was unaware of Buyukkokten's intention to use and exploit AEI's technology to develop competing social networking technology for defendant Google. If AEI had known of Buyukkokten's intention and development activities, AEI would have ceased providing access to AEI's trade secrets, technology and other confidential

information to Buyukkokten. In the face of Buyukkokten's repeated statements and denials of his true activities, AEI could not have reasonably discovered Buyukkokten's fraudulent acts before they were brought to AEI's attention after the launch of the Orkut.com website.

122. Through defendant Buyukkokten's misrepresentations and omissions, the defendants have accumulated and have misused AEI's trade secrets, technology and other confidential information. The aforementioned misrepresentations were willful, oppressive and malicious. As a result of Buyukkokten's false and deceitful representations, and AEI's reliance on the same, AEI has been materially and irreparably damaged in an amount to be proven at trial.

123. Defendant Buyukkokten's actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from defendant Buyukkokten in an amount sufficient to punish him, and deter others from engaging in similar wrongful conduct.

TENTH CAUSE OF ACTION

(Constructive Fraud Against Defendant Buyukkokten)

124. AEI hereby alleges and incorporates by reference paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

125. Buyukkokten's misrepresentations and omissions of material fact, as alleged above, have damaged AEI in an amount to be proven at trial.

126. Buyukkokten's actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from defendant Buyukkokten in an amount sufficient to punish him, and deter others from engaging in similar wrongful conduct.

ELEVENTH CAUSE OF ACTION

(Common Law Unfair Competition Against All Defendants)

127. AEI hereby alleges and incorporates by reference paragraphs 1 through 126, inclusive, of this Complaint as though fully set forth herein.

128. The defendants' conduct as described above constitutes unfair competition under California common law.

129. As a direct and proximate cause of the defendants' wrongful acts as alleged above, the defendants have been unjustly enriched and AEI has sustained damages in an amount to be proven at trial.

130. AEI also has suffered irreparable harm as a result of the defendants' activities, and will continue to suffer irreparable injury that cannot be adequately remedied at law unless the defendants, and their officers, agents and employees, and all persons acting in concert with them, are enjoined from engaging in any further such acts of unfair competition.

131. The defendants' actions were done with a conscious disregard for AEI's rights and constitute oppression, fraud, and/or malice under California Civil Code § 3294. AEI is entitled to recover punitive damages from the defendants in an amount sufficient to punish each of them, and deter others from engaging in similar wrongful conduct.

TWELFTH CAUSE OF ACTION

(Unfair Competition Under California Business and Professions Code §§ 17200 et seq. Against All Defendants)

132. AEI hereby alleges and incorporates by reference paragraphs 1 through 131, inclusive, of this Complaint as though fully set forth herein.

133. Defendants' acts and omissions alleged above constitute unfair competition and unlawful, unfair and fraudulent business practices within the meaning of Sections 17200, *et seq.*, of the California Business and Professions Code.

134. AEI also has suffered irreparable harm as a result of defendants' activities, and will continue to suffer irreparable injury that cannot be adequately remedied at law unless defendants, and their officers, agents and employees, and all persons acting in concert with them, are enjoined from engaging in any further such acts of unfair competition.

135. As a result of the defendants' acts of unfair competition, the defendants have been unjustly enriched at AEI's expense in an amount not yet ascertained. Accordingly, AEI is entitled to an accounting and restitution from Defendants in an amount to be determined in accordance with proof at trial.

RELIEF REQUESTED

WHEREFORE, AEI respectfully requests that this Court enter judgment in its favor and against the defendants and grant the following relief:

A. A judgment in favor of AEI and against the defendants on all Causes of Action;

B. A preliminary and permanent injunction enjoining the defendants, their officers, agents, representatives, servants and employees, and all persons in active concert and participation with them, from directly or indirectly:

(a) Obtaining, using, or communicating to any person any trade secrets or confidential information belonging to AEI, including an order enjoining the Orkut.com website from further operations;

(b) Inducing any AEI employee or former employee to breach any contract he or she has entered into with AEI; or

(c) Interfering with AEI's advantageous business relationships with its employees and customers;

C. A preliminary and permanent injunction enjoining defendants, their officers, agents, representatives, servants and employees, and all persons in active concert and participation with them, irrespective of whether under the control of the defendants, from all present and future misappropriation of AEI's trade secrets and confidential information;

D. An order providing further equitable relief that enjoins the defendants' unlawful conduct and/or will have the effect of "undoing" any past and current misappropriations of AEI's trade secrets and confidential information on the part of defendants and other appropriate persons and/or entities, irrespective of whether under the control of the defendants, including but not limited to an injunction against defendants preventing defendants from reentering the social networking area for a period of time, in order to eliminate the commercial advantage that has been derived from the misappropriation of AEI's trade secrets and confidential information;

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E. An order imposing a constructive trust over the Orkut.com website that also transfers all source code, technology, subscribers and other property of Orkut.com, LLC to AEI, including its membership information so that AEI can offer to continue such membership;

F. An order requiring the defendants to account for all gains, profits and advantage derived from their misappropriation of AEI's trade secrets and confidential information.

G. An order requiring the defendants to disgorge profits earned from their unlawful conduct, together with restitution to AEI arising from the defendants' unlawful conduct;

H. An order awarding AEI compensatory and punitive damages;

I. An order awarding AEI costs of suit, together with attorneys' fees, prejudgment and postjudgment interest, as provided under applicable law; and

J. Such other relief, in law or equity, as the Court may deem just and proper.

Dated: May 25, 2004

G. HOPKINS GUY, III
ERIC L. WESENBERG
MARK R. WEINSTEIN
CONNIE E. MERRIETT
ORRICK, HERRINGTON & SUTCLIFFE LLP

[signature]

G. Hopkins Guy, III
Attorneys for Plaintiff
AFFINITY ENGINES, INC.

JURY DEMAND

Plaintiff hereby demands a trial by jury for all issues which may be tried by jury.

Dated: May 25, 2004

G. HOPKINS GUY, III
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